



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 4, 1992

Ms. Catherine A. Ghiglieri
Commissioner
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705

Letter Opinion No. 92-46

Re: Whether a member of the Finance Commission appointed under article 342-104(4) V.T.C.S., may continue in office if he becomes a banking executive but has less than five years experience (RQ-242)

Dear Ms. Ghiglieri:

You request an opinion concerning the qualifications applicable to certain positions on the Finance Commission, a nine-member body charged with the duty to adopt rules and determine general policies for the regulation of state banks, state savings and loan or savings associations, and the consumer credit industry in the state. V.T.C.S. art. 342-103(A)(1); *see also id.* art. 342-102(12) (defining "state association"). The commission is established by article 342-103 of the Texas Banking Code of 1943, and the qualifications of its members are set out in article 342-104, which provides as follows:

1. Two (2) members of the Finance Commission shall be banking executives. *For the purposes of this article*, a banking executive is a person who has had five (5) years or more executive experience in the seven (7) years next preceding the person's appointment in a Federal or State bank in a capacity not lower than cashier and who, at the time of the person's appointment, is an officer in a State bank.

2. Two (2) members of the Finance Commission shall be savings and loan executives. *For purposes of this section* a savings and loan executive is a person who has had five (5) years or more executive experience in the seven (7) years next preceding

the person's appointment in a State or Federal Savings and Loan Association in a capacity not lower than cashier, and who at the time of the person's appointment is an officer in a State association.

3. Experience . . . [in certain executive positions in Banking Department] shall be deemed executive banking experience . . . within the meaning of this article.

4. The members of the Finance Commission who are not banking executives or savings and loan executives shall be selected by the Governor on the basis of recognized business ability. Those members may not be banking executives, savings and loan executives, or controlling shareholders in a bank or savings and loan association. . . .

5. [Prohibitions against various connections between members of Finance Commission and trade associations in banking or lending industry]

V.T.C.S. art. 342-104 (emphases added).

You inform us that a member of the Finance Commission appointed under article 342-104(4) is considering employment as a chief executive officer in a state bank. This member does not have sufficient banking or state regulatory experience to qualify for appointment to the Finance Commission under either part 1 or part 3 of article 342-104. You ask whether this member may continue to serve on the Finance Commission after becoming a chief executive officer in a state bank.

A member of the Finance Commission may be removed if he does not maintain the qualifications for appointment during his service on the commission. V.T.C.S. art. 342-107(1)(b). Thus, the commissioner who is the subject of your request must continue to maintain the qualifications for office set out in part 4 of article 342-104. We must determine whether a banking executive, with fewer than five years experience in that position, would qualify for appointment under part 4.

Part 4 of article 342-104 establishes qualifications for the "members of the Finance Commission who are not banking executives or savings and loan executives." Those members "may not be banking executives" V.T.C.S. art. 342-104(4). However, part 1 of article 342-104 defines a banking executive "[f]or the

purposes of this *article*," as "a person who has had five (5) years or more executive experience ... in a Federal or State bank." V.T.C.S. art. 342-104(1) (emphasis added); *see also id.* art. 342-104(2) (savings and loan executive defined "[f]or purposes of this section"). The commissioner at issue claims that he is not a "banking executive" within part 4 of article 342-104, because he has not had five years of executive experience in a federal or state bank. When the term, "this article" in part 1 is read literally, it defines "banking executive" for all parts of article 342-104, including part 4.

However, in interpreting a statute, a court will "diligently attempt to ascertain legislative intent." Gov't Code § 312.005. A court will not be bound by the literal meaning of words in construing statutes, when this leads to conclusions inconsistent with the general purpose of the act. *Lunsford v. Bryan*, 297 S.W.2d 115, 117 (Tex. 1957); *Miers v. Brouse*, 271 S.W.2d 419, 421 (Tex. 1954). When the intent of the legislature can be drawn from the whole statute, the court will restrict or enlarge the meaning of words to give the statute the meaning intended by the legislature. *Id.*; *see also* Gov't Code § 312.006(a) (statutes shall be liberally construed to achieve their purpose and promote justice).

It is inconsistent with the legislative intent underlying article 342-104 to read the definition of "banking executive" in part 1 to apply to part 4. For example, two positions on the commission are to be held by banking executives and two positions by savings and loan executives. Thus, representatives of the industries regulated by the Finance Commission have equal membership on the commission. If commission members appointed under part 4 could be banking executives, as long as they had less than five years experience, the equality for representatives of the two industries could easily be destroyed. More important, article 342-104, when seen as a whole, appears to reflect a legislative decision to allocate a fixed number of places on the commission to representatives of banks and of savings and loans, and another fixed number of places to persons who represent neither. If the definition of "banking executives" found in part 1 of article 342-104 is applied to part 4, the intended balance on the commission between representatives of regulated financial institutions and other persons could be disrupted by decisions made in the appointment process.

Legislative history demonstrates that the qualifications for appointment to the Finance Commission found in article 342-104 were intended to prevent industry domination of the commission. The present version of article 342-104 was adopted by Senate Bill 607 of the 71st Legislative Session. Acts 1989, 71st Leg., ch. 780, at

3410. Senate Bill 607 substantially amended the Texas Banking Code, providing for the reorganization of the Texas Finance Commission to address problems within the industry. House Comm. on Financial Institutions, Bill Analysis, S.B. 607, 71st Leg. (1989). Among the most significant changes made by Senate Bill 607 was the following:

Providing for a majority (5 of 9) of non industry people on the Finance Commission. This is intended to ensure that the interests of the public are protected while still providing for the necessary industry input in decision-making.

Id.

The bill analysis also stated that the amendment to article 342-104 would reduce the number of banking executives on the commission from four to two. *Id.* The Fiscal Note to Senate Bill 607 stated that the Finance Commission would consist of "two banking executives and two savings and loan executives, as defined in the act, and five public sector members." Fiscal Note, S.B. 607, 71st Leg. (1989) (April 25, 1989).

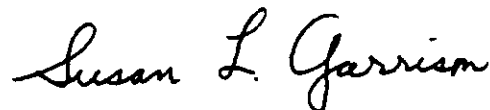
The language defining "banking executive" and the reference to "this article" appeared in part 1 of article 342-104 when it was introduced. S.B. 607, 71st Leg. (1989), Bill File, Texas Legislative Reference Library (introduced February 20, 1989). Nonetheless, the bill analysis and the fiscal note assumed that the definition of "banking executive" applied only to part 1 of article 342-104. The legislature intended the five members of the commission appointed under part 4 of article 342-104 to be public members, and that any banking executives, without regard to years of experience, be disqualified from appointment to any of those five commission memberships. This legislative intent may be implemented by reading the word "article" in part 1 of article 342-104 to mean "section," so that part 1 defines "banking executive" only for purposes of that part. Accordingly, a member of the Finance Commission appointed under part 4 of article 342-104, V.T.C.S., will become disqualified from that office and be subject to removal proceedings if he becomes a bank executive.

S U M M A R Y

Part 4 of article 342-104, V.T.C.S., provides that certain members of the Finance Commission may not be bank executives. Part 1 of article 342-104, V.T.C.S., provides that "a

banking executive is a person who has had five (5) years or more executive experience . . . in a Federal or State bank," but that definition does not define "banking executive" for purposes of part 4 of article 342-104, V.T.C.S. Accordingly, part 4 prohibits the appointment to the Finance Commission of any person who is a banking executive, even if that person has fewer than five years experience in that capacity. A member of the Finance Commission appointed under part 4 of article 342-104 will become disqualified for his office and be subject to removal if he becomes a banking executive during his term of office.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee

**cc: Mr. Fred Ellis
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